Supreme Court, U.S.
FILED

98 935 DEC 7 1998

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

IN RE THOMAS H. JOHNSON, III,

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Thomas H. Johnson, III
Attorney Pro Se
2507 West Broadway
Minneapolis, Minnesota 55411
(612) 521-6787

35 pp

QUESTIONS PRESENTED FOR REVIEW

Did the lower courts err in holding that:

(1) as a result of intentional statutory omissions, legislative intent can be implied without effecting petitioner's constitutional rights regarding due process?

(2) City Council could issue unlimited general obligation bonds, while circumventing petitioner's charter provided voting rights, using expired economic development statute?

(3) state court's declaration of municipality's legislation as ultra vires, Lilly v. City of Minneapolis; is insufficient to support petitioner's due process claim?

(4) petitioner failed to plead a sufficient declaratory judgement action, in regard to petitioner's due process claim?

PARTIES TO THE PROCEEDING

Thomas H. Johnson, III, Petitioner
Attorney Pro se,
2507 West Broadway
Minneapolis, Minnesota 55411
(612) 521-6787

City of Minneapolis, Appellee, by
James A. Moore, Assistant City Attorney,
300 Metropolitan Centre
333 South Seventh Street
Minneapolis, Minnesota 55402-2453
(612) 673-2063

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW I

PARTIES TO THE PROCEEDING II

TABLE OF CONTENTS III

TABLE OF AUTHORITIES IV

CITATIONS OF OPINIONS AND ORDERS 1

BASIS FOR JURISDICTION IN THIS COURT 1

STATUTES IN QUESTION 2

STATEMENT OF THE CASE 2

ARGUMENT IN SUPPORT OF PETITION 3

CONCLUSION 8

Appendices

Exhibit A - Circuit Court Opinion 1a

Exhibit B - District Court Opinion 9a

Exhibit C - Statutes in Question 19a

TABLE OF AUTHORITIES

Page

Cases

Adams v. Wainwright, D.C., Fla., 512 F. Supp. 948, 953 7

Hadley v. Junior College Dist., 397 U.S. 50, 25 Led 2d 45, 90 Sct. 791 (1972) 4

Reynolds v. Simms, 377 U.S. 533, 12 Led 2d 506, 84 Sct. 1362 4

Graham v. Folsom, 200 U.S. 248, 253, 50 Led 464, 26 Sct. 245 (1905) 5

Turner v. Snyder, 101 Minn. 481, 112 N.W. 868 (1907) 5

Lilly v. City of Minneapolis, 527 N.W. 2d 107 (Minn. Ct. App. 1995) rev. denied (Minn. Mar. 29, 1995) 6a, 15a

Statutes

Fourteenth Amendment 3

28 U.S.C. § 1331 3

28 U.S.C. §§ 2201, 2202 3

Art. XII § 4, Minn. Const. 6

Art. I § 2, Minn. Const. 6

Minn. Stat. § 469.129 ..... 4, 6

Minn. Stat. § 410.12 7

Minn. Stat. § 410.07 5

Minn. Stat. § 475.52 2

Ch. 15 § 9 Minneapolis Home Rule Charter 4

CITATIONS OF OPINIONS AND ORDERS

In re Johnson v. City of Minneapolis, Case No. 96-2736, U.S. Court of Appeals (8th Cir. 1998); Rehearing denied (8th Cir. 1998)

In re Graham et al v. City of Minneapolis et al, Case file No. 4-95-865, U.S. District Court for Minnesota, Honorable John J. Tunheim, presiding judge.

Basis For Jurisdiction In This Court

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on August 13, 1998.

The order of the United States Court of Appeals for the Eighth Circuit denying a petition for rehearing was entered on September 14, 1998.

The Court has jurisdiction to review the judgment in question on a writ of certiorari pursuant to 28 U.S.C. § 1254.

Rule 29.4(b) of this Court does not apply.

Rule 29.4(c) of this Court does not apply whereby 28 U.S.C. § 2403(b) may be applicable and shall be served on the Attorney General for the state of Minnesota.

STATUTES IN QUESTION

Minn. Stat. § 469.129 and its questionable interplay with Minn. Stat. §§ 475.52, 410.07, 410.12, 410.30; Art. XII § 4, Minn. Const.; Art. I § 2, Minn. Const.; and Ch. 15 § 9 of the Minneapolis Home Rule Charter.

STATEMENT OF THE CASE

Petitioner is a United States Citizen, qualified voter and taxpayer residing within the home rule charter city of Minneapolis, Minnesota. The petitioner is also a member of a group of plaintiffs who in 1995 charged in the district court that they were deprived of their constitutional right to vote on the question of the city's issuance of 72 million dollars in general obligation bonds, Case No. 4-95-865. The home rule charter of the city of Minneapolis requires a referendum when the city council desires to incur debt in excess of 15 million dollars. All parties concur that the bonds, which were issued to acquire a sports arena for a national basketball team, were exclusively local, impacting only the property of residents of Minneapolis.

The petitioner has maintained that the charter limitation provisions should govern, i.e., Minn.Stat. § 475.52, since municipal bonding is a matter of local

concern. The Appellees maintain that the legislature had the inherent power to amend the home rule charter which they did, using an expired 1979 statute, without violating the petitioner's due process guarantees impacting both his property and liberty interests. The district court concurred with the Appellee's position and the Court of Appeals for the United States Eighth Circuit affirmed the district court's ruling. The petitioner invoked the jurisdiction of the Court in this matter pursuant to 28 U.S.C. §§ 2201, 2202 and 28 U.S.C. § 1331, requesting a declaratory judgment of the Court, that appellees' actions constitute a violation of petitioners' fourteenth amendment right to due process.

It is the petitioner's belief that this matter, pursuant to Rule 10, deserves a review on a writ of certiorari by this Court because the United States Court of Appeals for the Eighth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Argument In Support Of Petition

The lower courts erred in holding that the Minneapolis City Council could issue an unlimited amount of general obligation bonds in 1995 by using an expired 1979 statute allowing the city council to circumvent charter required referendum provisions prior to the issuance of 72 million dollars in general obligation bonds.

The city council has moved beyond their charter imposed limitation of "requesting to incur debt," pursuant to Chapter 15 § 9 of the Minneapolis Home Rule Charter, to incurring enormous and unlimited general obligation debt upon their own initiative, in direct conflict with the charter. The facilitating legislation for the council actions has been Minn. Stat. § 469.129, which allows the council to entirely neglect the approval of a majority of the electors of the city, while involuntarily pledging the citizens property for massive and unlimited general obligation debt.

The petitioner believes that the remedy is embodied in rulings of the Court, which has acted consistently and clearly regarding "One-person, One Vote." The Court has determined that the one-person, one-vote principle covered all types of local governments exercising *"general governmental powers"* having a significant impact on all citizens. Hadley v. Junior College Dist., 397 U.S. 50, 25 Led 2d 45, 90 Sct. 791 (1972). Reynolds v. Simms, 377 U.S. 533, 12 Led 2d 506, 84 Sct. 1362.

Although in its haste to circumvent this most fundamental of principles, the Appellee and the legislature have attempted to surreptitiously amend the city's home rule charter. The Court has repeatedly stated that *"the power of the state to repeal its legislation far outweighs*

its inherent power to alter or destroy its municipal corporations." Graham v. Folsom, 200 U.S. 248, 253, 50 Led 464, 26 Sct. 245 (1905).

The appellee in conjunction with cohorts appear to be intractably committed to incurring record setting general obligation debt that jeopardizes the economic welfare and public safety of the city. Despite cautionary advisories from national bond rating organizations, the appellees continue to incur general obligation debt, the type which pledges petitioner's property, involuntarily, as collateral at a rate that is two hundred percent above other cities of the same population size.

Minneapolis is a home rule charter city granted by constitutional amendment. All home rule charter cities in the state have the power and authority to enact laws to govern their own municipalities. These laws are considered to be special laws that have dominion over the general laws enacted by the legislature as long as they are not in conflict with the constitution (see Minn. Stat. § 410.07, Appendix-C), "Where the charter covers the entire subject matter, the intention to supersede all general laws on the subject will be presumed, ***unless otherwise expressed***." Turner v. Snyder, 101 Minn. 481, 112 N.W. 868 (1907).

The Eighth Circuit, in its ruling, opined that the legislature's omission of several general statutes governing the incurrence of public debt, from those which

are published within the statute and conferring authority upon Minn. Stat. § 469.129, represented an *"implied"* act to intentionally render petitioner's voting rights inapplicable. Implied understandings of statutory meaning are generally not the rule in regard to the statutory construction of laws within the state.

There is a natural matriculation of laws that govern home rule, bond issuance, and voting rights. These laws are found in the history of city versus state rights in Minnesota during the mid 19th century, culminating finally into constitutional amendments, i.e., the *"Home Rule Charter Amendment"* Art. XII § 4 of the Minn. Constitution; the due process and equal protection clauses of the Bill of Rights, Art. I § 2 of the Minn. Constitution; and also enabling acts and statute chapters, I.e., Minn. Stat. Ch. 410, the *"Home Rule Enabling Act;"* and Minn. Stat. Ch. 475, governing general public municipal indebtedness.

The ruling of the Eighth Circuit now allows for such inadequate laws as 469.129, that violate the rules of statutory construction. Notwithstanding the fact that it was 8 years expired the day it was enacted in 1987, the idea of *"implicit applicability"* is alien to statutory construction governing repeal or the amending of laws within the state. The Eighth Circuit's ruling appears to condone these clandestine enactments that effect the very root of the petitioner's due process guarantees; his property and liberty interests.

This legislative grant of authority to city councils, nullifying charter imposed voting requirements in regard to the incurrence of public debt, undermines the basic fundamental rights afforded the petitioner. The petitioner contends that he has a liberty interest in the constitutional amendments, statutes, and charter provisions protecting his right to vote under the Minneapolis Home Rule Charter in regard to the incurrence of municipal debt. The appellees have contravened petitioner's voting rights by attacking home rule charter authority. The Court has ruled in the past that *"once the state imposes limitations on its own discretion and requires that a specific standard prevail in decision making, it creates a liberty interest. This is true regardless of whether the limits stem from statute, rule or regulation."* Adams v. Wainwright, D.C., Fla., 512 F. Supp. 948, 953.

The appellees are limited in regard to their amending of charter authority by general law. It can be done, but must be performed in accordance with state law, i.e. Minn. Stat. § 410.12. Had they done so, petitioner may not have had a cause of action to initiate this complaint. The appellees, instead, have chosen a methodology of charter amendment inherently flawed by constitutional impediments. The ruling of the Eighth Circuit sheds no light on this extremely vexing issue, rather, it further clouds the issue and implies a reluctance to confront potentially severe constitutional infringements. Thus, the petitioner now turns to this Court for relief.

CONCLUSION

WHEREFORE, petitioner requests that this Court grant the petition for a writ of certiorari, reverse the Eighth Circuit, and compel the lower courts to follow the law.

Respectfully Submitted,

_____

Thomas H. Johnson, III
Petitioner ~ Attorney Pro se

No. _____

In The

Supreme Court of the United States

October Term, 1998

IN RE THOMAS H. JOHNSON, III,

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Thomas H. Johnson, III
Attorney Pro Se
2507 West Broadway
Minneapolis, Minnesota 55411
(612) 521-6787

EXHIBITS

EXHIBIT A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-2736

Thomas H. Johnson, III,

Plaintiff - Appellant,

v.

City of Minneapolis; John Mori, Chief Finance Officer; Michael Cunningham; John Utley, Bond Council; Sharon Sayles-Belton, Mayor, Member of the Board of Estimate and Taxation; Jackie Cherryhomes, Minneapolis City Council, Member of the board of Estimate and Taxation; Jack Qvale, Executive Secretary of the Board of Estimate and Taxation; Irving Weiser, Dain Bosworth, Inc.; Roger Wikner, Miller & Schroeder Financial Services, Inc.,

Defendants - Appellees.

* * * * *

On appeal from the United States District Court for the District of Minnesota

Submitted: June 10, 1998
Filed: August 13, 1998

BEST AVAIL

Before BOWAN, Chief Judge, BEAM, Circuit Judge, and GAITAN,[2] District Judge.

FERNANDO J. GAITAN, JR., District Judge.

Thomas A. Johnson III appeals from the district court's order of dismissal. Johnson brought this action pro se on behalf of himself and other plaintiffs. The district court granted defendants' motion to dismiss, finding that plaintiffs had not sufficiently pled a class action, had not pled a sufficient property or liberty interest to give rise to due process claims, and had not sufficiently pled equal protection claims. Johnson, now through counsel, appeals the district court's order as to dismissal of the merits but not as to class certification. Because we conclude that the district court[3] correctly determined that Johnson failed to present any claims that could entitle him to relief, we affirm the district court's order dismissing the case.

I. BACKGROUND

Johnson initiated this action after the City of Minneapolis purchased the Target Center Arena from

---

[2]The HONORABLE FERNANDO J. GAITAN, JR., United States District Judge for the Western District of Missouri, sitting by designation.

[3]The HONORABLE JOHN R. TUNHEIM, United States District Judge for the District of Minnesota.

ABLE COPY

private owners in 1995 using the proceeds of a City of Minneapolis bond issue. Johnson and the other plaintiffs,[4] all of whom were residents of the City of Minneapolis, objected to the constitutionality of the bond issue and sued in district court on due process and equal protection grounds.

In a four-count complaint, plaintiffs brought two equal protection claims, a claim pursuant to 42 U.S.C. § 1983, and a § 1985 conspiracy claim. As the district court correctly pointed out, 42 U.S.C. § 1983 does not provide substantive rights, but rather creates a cause of action for deprivation of a claimant's constitutional rights by any person under color of state law. 42 U.S.C. § 1985 creates a cause of action for conspiracy to deprive any person or class of persons of equal protection of the law.

II. DISCUSSION

We review the district court's Fed.R.Civ.P. 12(b) dismissal of Johnson's action de novo. See Concerned Citizens of Neb. v. United States Nuclear Regulatory Comm'n, 970 F.2d 421, 425 (8th Cir. 1992). We must construe the allegations in the complaint in the light most favorable to Johnson, see id., and should not approve dismissal of his complaint for failure to state a claim

---

[4]Although several plaintiffs were involved in this case, only Johnson appeals the district court's final decision.

favorable to Johnson, see id., and should not approve dismissal of his complaint for failure to state a claim unless "it appears beyond doubt that [he] can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957) (footnote omitted).

Appellant presents only one question on appeal: Did the district court err in finding that the complaint failed to plead a sufficient declaratory judgment action? This court will first consider this issue in the context of appellant's due process claim, and then as it relates to the equal protection claims.

A. **Due Process**

A due process claim is cognizable only if there is a recognized liberty or property interest at stake. Movers Warehouse, Inc. v. City of Little Canada, 71 F.3d 716, 718 (8th Cir.1995). Property interests are created by existing rules or understandings that stem from an independent source, such as state law. Board of Revents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701,. 2709, 33 L.Ed.2d 548 (1972).

The appellant contends that a property interest exists as a result of the referendum requirement imposed by the Minneapolis Home Rule Charter ("Charter")[5] The

---

[5]Minneapolis Home Rule Charter Ch. 15, § 9, provides:

Upon request of the City Council expressed by ordinance or resolution adopted by the votes of two-thirds of all

Charter provides direction for the Board of Estimate and Taxation when issuing bonds, and comands that bond issues exceeding $15,000,000 must first be approved by a majority of the electors. However, the bonds that are the subject of this dispute were not issued pursuant to the Charter by the Board of Estimate.

Instead, the bonds were issued by the Minneapolis City Council under the authority granted in Minn. Stat. 469.129.[6] This statute deals with the issuance of municipal bonds for economic development purposes. Appellant claims that the provisions of the Charter requiring a referendum still apply. We, like the district court, hold to the contrary.

Johnson argues that the Charter still must apply, apparently because a Minnesota statute exists which, if it were applicable, would subject the issuance of bonds to city charter-based limitations. The problem with Johnson's argument is that Minn. Stat. 475.52(2)[7] is not,

---

the members thereof, the Board of Estimate and Taxation in its discretion ... shall have the power to issue and sell negotiable bonds ... [If the amount of indebtedness exceeds $15,000,000] the board of Estimate and Taxation shall not issue or sell any [such] bonds ... without approval of a majority of the electors.

[6]Minn.Stat. § 469.129(1) states that:

The governing body may authorize, issue and sell general obligation bonds to finance the acquisition and betterment of real and personal property needed to carry out the development program within the development district. The bonds shall ... be issued in accordance with [enumerated sections of Minn.Stat. Ch. 475].

[7]Home rule charter cities.

in fact, applicable to bonds issued pursuant to § 469.129. Section 469.129 specifically enumerates several statutes that apply. Minn.Stat. § 475.52(2), imposing charter-based limitations on the authority tossue bonds, has not been made applicable to § 469.129.

Putting another twist on the same argument, Johnson claims that this bond issue is a matter of local concern and that therefore, according to Minnesota law, the Charter should apply. Although enactments by home rule cities are generally given full legislative force in Minnesota, State v. City of Crookston, 91 N.W.2d 81, 83 (Minn. 1958), they are usurped when the state legislature has "expressly or impliedly restricted the municipality's power over these matters[.]" Gadey v. City of Minneapolis, 517 N.W.2d 344, 348 (Minn.Ct.App. 1984); see also, Lilly v. City of Minneapolis, 527 N.W.2d 107, 111 (Minn.Ct.App. 1995). As discussed, supra, several sections of Chapter 475 are referenced as applicable to § 469.129, but § 475.52(2) is not imposed, or is "impliedly restricted" from the issuance of bonds

---

Any city governed by a home rule charter may issue bonds for any purpose enumerated in subdivision 1 unless forbidden by its charter, except that any such city may issue bonds for the acquisition of ambulances and related equipment notwithstanding the provisions of its charter; and for other purposes as authorized by its charter.

Minn.Stat. § 475.52(2)

pursuant to § 469.129. Because Johnson had no legitimate expectation that he would be entitled to vote on any bonds issued under Minn. Stat. § 469.129, he lacks a protected liberty or property interest upon which to base a due process claim.

B. **Equal Protection**

Appellant next argues that the district court erred in finding there to be no class of people who had received disparate treatment in violation of the equal protection clause. To state an equal protection claim, appellant must have established that he was treated differently from others similary situated to him. See Klinger v. Department of Corrections, 31 F.3d 727, 731 (8th Cir. 1994), cert. denied, 513 U.S. 1185, 115 S.Ct. 1177, 130 L.Ed.2d 1130 (1995).

The district court found that "plaintiffs neither describe the classification at issue nor identify any differential treatment to which they have been subjected." The court, finding that the only class plaintiffs identified was that of qualified voters in the City of Minneapolis, applied rational basis review and dismissed plaintiffs' claims.

On appeal, appellant, through counsel, now attempts to recharacterize the equal protection claims. "[W]hat [Johnson] meant to say is that his right to vote was abrogated." Brief of Appellant, p. 16. However, the cases cited by appellant are inapposite, for they involve legislation that impacted the voting power of a particular

group (e.g. racial minority groups), whereas appellant concedes that this case does not involve a protected class.

Because no protected class is involved, the legislative decision -- to except economic development bonds from referendum requirements -- is reviewed only for a rational basis. Where rational basis review is appropriate, the plaintiff/appellant bears the burden of proof, and the statute in question bears a strong presumption of validity. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 314, 113 S.Ct. 2096, 2101-2, 124 L.Ed.2d 211 (1993), citing Lyng v. Automobile Workers, 485 U.S. 360, 370, 108 S.Ct. 1184, 1192, 99 L.Ed. 2d 380 (1988). Because we agree that the complaint does not plead an equal protection claim upon which relief could be granted, we also affirm this portion of the district court's decision.

III. CONCLUSION

For the reasons set forth above, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF
APPEALS, EIGHTH CIRCUIT.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil No. 4-95-865

CHARLES GRAHAM, TRAVIS LEE, THOMAS H. JOHNSON, III, JOHN JAMES, LEON WILLIAMS, as residents of the City of Minneapolis, and qualified voters individually, and on behalf of all other persons similarly situated,

Plaintiffs,

v.

CITY OF MINNEAPOLIS; JOHN MOIR, Chief Finance Officer; MICHAEL CUNNINGHAM and JOHN UTLEY, Bond Counsel; SHARON SAYLES-BELTON, Mayor; JACKIE CHERRYHOMES, Minneapolis City Council; Member of the Board of Estimate and Taxation; GORDON NELSON, President; JACK QVALE, Executive Secretary of the Board of Estimate and Taxation; IRVING WEISER; DAIN BOSWORTH, INC., ROGER WIKNER; MILLER & SCHROEDER FINANCIAL SERVICES, INC.,

Defendants.

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

Thomas H. Johnson, *pro se.*

James A. Moore and Bruce L. Gritters, MINNEAPOLIS CITY ATTORNEY'S OFFICE, 300 Metropolitan Centre, 333 South Seventh Street, Minneapolis, MN 55402-2453; for defendants City of Minneapolis, John Moir, Mayor Sayles-Belton, Council President Cherryhomes, Gordon Nelson and Jack Qvale.

Filed May 23, 1996
Judgment Entd. May 23, 1996
Deputy Clerk s/*GB*

Michael C. Flom, GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A., 3400 City Center, 33 South Sixth Street, Minneapolis, MN 55402, for defendants Michael Cuningham and John Utley.

James G. Bullard and Patrick M. O'Brient, LEONARD, STREET AND DEINARD, P.A., 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, for defendants Irving Weiser, Dain Bosworth, Inc., Roger Wikner, and Miller & Schroeder Financial, Inc.

In March 1995, the City of Minneapolis purchased the Target Center Arena from private owners with the proceeds of a City of Minneapolis bond issue authorized by resolutions of the Minneapolis City Council. In November 1995, five residents of the City of Minneapolis filed a complaint with this Court challenging the constitutionality of the bond issue and seeking certification of a class of "all qualified voters of the City of Minneapolis," a declaratory judgment, and other relief. Plaintiffs amended their complaint on March 29, 1996. Plaintiffs' amended complaint alleges a number of treated

constitutional violations. Plaintiffs claim denial of their rights to due process and equal protection under the federal constitution, equal protection under the state constitution, and violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985.

Plaintiffs named the following defendants: Sharon Sayles-Belton, Mayor of the City of Minneapolis; Jackie Cherryhomes, Minneapolis City Council President; John Moir, Chief Finance Officer for the City of Minneapolis; Gordon Nelson, President of the Minneapolis Board of Estimate and Taxation; Jack Qvale, Executive Director of the Minneapolis Board of Estimate and Taxation; Michael Cunningham and John Utley, Bond Counsel ("bond counsel"); Roger Wikner and Miller & Schroeder Financial, and Irving Weiser and Dain Bosworth, underwriters for the bond issue ("underwriters"). Plaintiffs do not identify which alleged violations they attribute to which of the defendants. This matter is before the Court on defendants' motions to dismiss.

Before discussing the merits of plaintiffs' claims, some clarification regarding the status of both plaintiffs and the public defendants is necessary. With respect to the public defendants, the Court notes that the Mayor of the City of Minneapolis, the Chief Finance Officer for the City, the President of the Minneapolis City Council, the President of the Minneapolis Board of Estimate and Taxation, and the Executive Director of the Minneapolis Board of Estimate and Taxation were named as defendants to this lawsuit in their official capacities. A suit against a government official in his or her official capacity is clear.

treated as a suit against the governmental entity rather than as a suit against the individual. *Will v. Michagan Dep't State Police*, ___ U.S. ___, 109 S.Ct. 2304, 2312 (1989); *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). Plaintiffs' claims are claims against the individuals' offices, and the Court will address them as such.

The status of the plaintiffs in this case should also be clarified. Plaintiffs' request that the Court certify a class of "all qualified voters of the City of Minneapolis," with plaintiffs serving as class representatives. Plaintiffs have failed to establish any legal grounds for this request. Fed. R. Civ. P. 23 governs the procedure regarding class actions. This Court may certify a class only if:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Plaintiffs have the burden of demonstrating that they have met the requirements of Rule 23. *Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir. 1994). Plaintiffs have not demonstrated that the proposed class meets the requirements of numerosity, commonality or typicality or that the named plaintiffs would adequately represent the class. Nor have plaintiffs shown that a class action is proper under Fed. R. Civ. P. 23(b). As in *Coleman*, plaintiffs' complaint contains "only the barest of

conclusory allegations, and fails even to state that [plaintiffs] will fairly represent the interests of the purported class." 40 F.3d at 259. The Court therefore denies class certification.

With respect to the merits of the defendants' motions, a motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the sufficiency of the complaint. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). When analyzing a motion to dismiss, the court looks to the complaint as pled. The complaint must be liberally construed and viewed in the light most favorable to the plaintiff. *Id.* The court will dismiss a complaint, however, when it appears the plaintiff cannot prove any set of facts in support of the claim which would entitle it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). For the following reasons, plaintiffs' complaint will be dismissed.

Plaintiffs allege violations of their rights to due process and equal protection. Plaintiffs' § 1983 and § 1985 claims are presumably based on these alleged constitutional violations.[1]

---

[1]42 U.S.C. § 1983 does not provide any substantive rights, but creates a cause of action for deprivation of a claimant's constitutional rights by any person under color of state law. *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 614 (1979). 42 U.S.C. § 1985 creates a cause of action for conspiracy to deprive any person or class of persons of equal protection of the law.

A due process claim must be predicated on the existence of a property or liberty interest. To have a protected property interest, plaintiffs must show they have a legitimate claim of entitlement based on a law or regulation. Plaintiffs apparently claim that the Minneapolis Home Rule Charter ("Charter"), Ch. 15 § 9, gives them a protected property interest in the right to vote on the bond issue used to finance the City's purchase of the Target Center. Chapter 15, § 9, provides that the Board of Estimate and Taxation shall not issue bonds exceeding $15 million without approval by the voters.[2] The bonds in question, however, were not issued by the Board of Estimate and Taxation. The City argues that it properly issued the bonds pursuant to a statutory delegation of power to the City found in Minn. Stat. § 469.129, rather than under the authority cited by plaintiffs.[3] The City therefore states that

---

[2]Minneapolis Home Rule Charter Ch. 15 § 9, provides:

Upon request of the City Council expressed by ordinance or resolution adopted by the votes of two-thirds of all the members thereof, the Board of Estimate and Taxation in its discretion ... shall have the power to issue and sell negotiable bonds ... [In the event any indebtedness in connection therewith exceeds $15,000,000] the Board of Estimate and Taxation shall not issue or sell any [such] bonds ... without the approval of a majority of the electors.

[3]Minn. Stat. § 469.129 provides:

Subdivision 1. **General obligation bonds.** The *governing body* may authorize, issue and sell general obligation bonds to finance the acquisition and betterment of real and personal property needed to carry out the development program within the development district ... The bonds shall ... be issued in accordance with [enumerated sections of Minn. Stat. Ch. 475].

(Emphasis added.)

plaintiffs have no legitimate expectation of voting on the bond issue in question.

Minn. Stat. § 469.129 is a legislative grant to cities of authority to issue bonds for economic development purposes. Plaintiff concedes that the bonds in question were issued under the statute. The legislature has the authority to enact laws of general applicability to which home rule charter cities are subject. *See Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995), *rev. denied* (Minn. March 29, 1995). In the case of Minn. Stat. § 469.129, the legislature created the power for cities to issue bonds for a particular purpose and required that they be issued in accordance with specifically enumerated provisions of Minn. Stat. Ch. 475. The legislature did not include Minn. Stat. § 475.52, subd. 2, imposing city charter-based limitations on the authority to issue bonds; therefore, the limitations contained in that section do not apply to bonds issued under Minn. Stat. § 469.129.

The legislation creating the authority to grant bonds for economic development purposes places that authority in the "governing body" and defines it as the city council. Minn. Stat. § 469.129, subd. 8. Plaintiffs argue that because the legislature made the definitions section of Chapter 475, Minn. Stat. § 475.51, applicable to Minn. Stat. § 469.129, and Chapter 475 contains a definition of "governing body" which conflicts with the definition of "governing body" contained in Minn. Stat. § 469.129, the definition in Chapter 475 should apply. Adopting plaintiffs' argument would render the definition specifically included in Minn. Stat. § 469.129 meaningless and frustrate the clear

legislative intent behind Minn. Stat. § 419.129. The Court finds that the definition of "governing body" for purposes of Minn. Stat. § 419.129 is that contained in Minn. Stat. § 419.125, subd. 8, the city council.

The Court finds that the City properly issued the bonds in question pursuant to Minn. Stat. § 469.129; all constitutional claims predicated on plaintiffs' ability to establish a protected property interest under Minneapolis City Charter Chapter 15, § 9, with respect to the bond issue in question will therefore be dismissed.

Plaintiffs also assert an equal protection claim. The equal protection clause requires that all similarly situated persons shall be treated similarly. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985). Classifications that neither involve fundamental rights, nor proceed along suspect lines, are accorded a strong presumption of validity if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. *FCC v. Beach Communications, Inc.*, ___ U.S. ___, 113 S. Ct. 2096, 2102 (1993). To state an equal protection claim, plaintiffs must, at a minimum, show that the government has failed to treat similarly situated persons alike. *Abdullah v. Gunter*, 949 F.2d 1032, 1037 (8th Cir. 1991). Plaintiffs neither describe the classification at issue nor identify any differential treatment to which they have been subjected. The only class plaintiffs identify is qualified voters in the City of Minneapolis, which is not a suspect class. There is no allegation that this class was subjected to treatment different from that of any similarly situated group. Plaintiffs' equal protection claim will

therefore be dismissed.

Because plaintiffs have not demonstrated any violation of the state or federal constitutions in connection with the Target Center bond issue, plaintiffs have demonstrated no basis for liability against any of the defendants under 42 U.S.C. § 1983 or 42 U.S.C. § 1985. Plaintiffs' complaint should therefore be dismissed in its entirety under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.[1] Given that there is no basis for liability against any of the defendants, the Court need not reach the issues of whether bond counsel and the underwriters acted under color of state law with respect to the bond issue, whether plaintiffs failed to join necessary parties or whether plaintiffs' claims are barred by laches.

---

[1]As an alternative basis for dismissing plaintiffs' claims, the Court finds plaintiffs' pleading deficient under the Fed. R. Civ. P. 8(a) requirement that the complaint contain a "short and plain statement of the claim showing the plaintiff is entitled to relief" and the case law requiring specificity in pleading constitutional violations. *See Liggins v. Morris*, 749 F. Supp. 967, 971 (Minn. 1990) (§ 1983 claims which do "nothing more than identify a multitude of parties plaintiff, a number of defendants, a series of counts, and allegations of violations of every known constitutional provision ... [are] subject to dismissal for failure to comply with Rule 8 and Rule 11 of the Federal Rules of Civil Procedure."). Plaintiffs have not described specific facts upon which they base their claims for relief, nor tied those facts to their vague allegations of constitutional violations. In light of the fact that plaintiff appears pro se, however, the Court has evaluated the substantive claims in plaintiffs' complaint to the extent that they could be discerned.

ORDER

Accordingly, based on the above and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that defendants' motions to dismiss [Docket Nos. 12, 15 and 17] are **GRANTED.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 22, 1996.

s/ JOHN R. TUNHEIM
United States District Judge

EXHIBIT C

STATUTES IN QUESTION

CONSTITUTION OF THE STATE OF MINNESOTA

ARTICLE I -- BILL OF RIGHTS

Section 2. **RIGHTS AND PRIVILEGES.**

No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted.

ARTICLE XII -- SPECIAL LEGISLATION; LOCAL GOVERNMENT

Section 4. **HOME RULE CHARTER.**

Any local government unit when authorized by law may adopt a home rule charter for its government. A charter shall become effective if approved by such majority of voters of the local government unit as the legislature prescribes by general law. If a charter provides for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

CHAPTER 410 -- CLASSIFICATION; CHARTERS

410.07. DETERMINATION OF DESIRABILITY; FRAMING CHARTER.

Subject to the limitations in this chapter provided, it may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896. It may omit provisions in reference to any department contained in special or general laws then operative in the city, and provide that such special or general laws, or such parts thereof as are specified, shall continue and be in force therein, including any such special or general law authorizing the city to incur indebtedness or issue its bonds for municipal purposes. It may prescribe methods of procedure in respect to the operation of the government thereby created, and the duties thereunder of all courts and officers of the district and county in which the city is situated, which duties such courts and officers shall perform.

410.12. AMENDMENTS.

Subd. 1a. **Alternative methods of charter amendment.** A home rule charter may be amended only by following one of the alternative methods of amendment provided in subdivisions 1 to 7.

410.30. ABANDONMENT OF HOME RULE CHARTERS BY CITIES; ASSUMPTION OF STATUTORY CITY STATUS.

Any city of any class having a home rule charter may abandon such charter and become a statutory city. A proposal to abandon the charter shall be presented, adopted, and become effective in the same manner as a charter amendment, and all statutory provisions relating to home rule charter amendments shall apply to a proposal to abandon...

CHAPTER 469 -- ECONOMIC DEVELOPMENT

469.129 ISSUANCE OF BONDS.

Subd. 1. **General obligation bonds.** The governing body may authorize, issue, and sell general obligation bonds to finance the acquisition and betterment of real and personal property needed to carry out the development program within the development district together with all relocation costs incidental thereto. The bonds shall mature within 30 years from the date of issue and shall be issued in accordance with sections 475.51, 475.53, 475.54, 475.55, 475.56, 475.60, 475.61, 475.62, 475.63, 475.65, 475.66, 475.69, and 475.70. All tax increments received by the city pursuant to Minnesota Statutes 1978, section 472A.08, shall be pledged for the payment of these conds and used to reduce or cancel the taxes otherwise required to be extended for that purpose. The bonds shall not be included when computing the city's net debt. Bonds shall not be issued

under this paragraph subsequent to August 1, 1979.

CHAPTER 475 -- PUBLIC INDEBTEDNESS

475.52 **BOND ISSUES; PURPOSES.**

Subd. 2. **Home rule charter cities.** Any city governed by a home rule charter may issue bonds for any purpose enumerated in subdivision 1 unless forbidden by its charter, except that any such city may issue bonds for the acquisition of ambulances and related equipment notwithstanding the provisions of its charter; and for other purposes as authorized by its charter.